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AI – Accelerating and Improving Litigation

W. Craig Hamilton
Moderator
MCDOWELL KNIGHT ROEDDER & SLEDGE, LLC
Mobile, AL
chamilton@mcdowellknight.com

D. Jay Davis, Jr.
CLEMENT RIVERS, LLP
Charleston, SC
jdavis@ycrlaw.com

Jennifer "JD" Devereaux Segers
HUIE, FERNAMBUCQ & STEWART, LLP
Birmingham, AL
jsegers@huielaw.com

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The landscape of the legal field is ever-changing, and legal professionals forecast a new change is coming with the use of Artificial Intelligence ("AI").

The Benefits and Risks of AI Use in Today's Law Practice

AI is revolutionizing the legal industry, offering both exciting opportunities and potential risks for law practices. Integrating artificial intelligence into legal practices offers numerous advantages, including increased productivity, cost savings, and improved accuracy. AI-powered tools can automate routine tasks, allowing lawyers to focus on high-value work and enhance client service.

A recent study indicates that 75% of law firms experienced increased productivity, while 80% reported better accuracy in their work after implementing AI solutions. Additionally, AI can significantly speed up legal research with some systems capable of analyzing vast amounts of data in minutes rather than hours or days. This efficiency not only saves time, but also potentially improves access to justice by making legal services more affordable and accessible to a broader range of clients.

That being said, AI also presents several risks for legal practitioners. Ethical concerns arise from potential algorithmic bias and the need for human oversight to ensure a fair and just outcome. Data privacy and client confidentiality are paramount, requiring robust security measures when using AI tools. There is also a risk of overreliance on AI, potentially leading to a decline in critical thinking skills among lawyers.

AI-generated content may contain inaccuracies or "hallucinations," necessitating careful human verification. Additionally, the automation of entry-level tasks could potentially displace some junior lawyers and paralegals, reshaping the legal workforce.

As firms explore AI-powered tools like CoCounsel and Westlaw Precision and their ability to enhance efficiency and accuracy in tasks ranging from legal research to document review, questions will arise about response times, installation processes, costs, and the broader implications of this technology for the legal profession.

AI Tools for the Practicing Lawyer

One of the most popular and exciting tools available to lawyers now is an AI program called CoCounsel, which is marketed as one of the top programs for AI assistance for the law practice. CoCounsel, developed by Casetext in collaboration with OpenAI, offers a range of AI-powered features to streamline legal work. These include document review with citations, deposition preparation, legal research memo drafting, and contract summarization. The system can answer questions about databases, extract data from contracts, and identify non-compliant clauses.

While AI programs allow lawyers to "delegate substantive work to AI and trust the results," all such services emphasize the need for human review and evaluation of AI-generated output. This cautious approach is smart and highlights the balance between leveraging AI capabilities and maintaining professional responsibility in legal practice.

In addition, there is now AI assisted legal research available through Westlaw and others.   Integrating generative AI capabilities into Westlaw Precision is the latest advancement in this area for Westlaw. This enhancement allows users to query and understand results using conversational language in a chat-type interface. The program still leverages Westlaw's content and search functionality, but the AI integration enables legal professionals to

navigate Westlaw results faster and more thoroughly than prior to AI integration.

Thomson Reuters is also developing a new plugin with Microsoft 365 Copilot which when released will further expand the reach of AI-assisted legal research in conjunction with the AI Copilot programs.

For those interested in finding some of the most popular AI programs in addition to Casetext and CoCounsel, check out: (1) "Harvey AI" - An AI-powered legal research tool that uses natural language processing and machine learning, which can assist with tasks like contract analysis, due diligence, litigation, and regulatory compliance; (2) "Lex Machina" - A litigation analytics software that uses AI to mine litigation data and provide insights about lawyers, judges, parties, and experts; (3) "ChatGPT" - While not specifically designed for legal work, many lawyers use ChatGPT for drafting legal documents, conducting initial research, and creating their own GPT tools; (4) "Perplexity.ai" - a very powerful AI tool; (5) "Legal Robot" - An AI platform for contract review, risk assessment, and legal document drafting; (6) "DoNotPay" - An AI tool that helps with consumer rights issues, parking tickets, and small claims disputes; (7) "Ivo" - An AI tool for automating law firm operations and case management; (8) "vLex" - An AI-powered legal research platform with a large regulatory database and features for answering legal questions and building arguments; (9) "Luminance Corporate" - An AI tool for contract lifecycle management and due diligence.

This is a revolutionary new world and the benefits of AI in the practice of law are without a doubt exciting. Of course, the choice of any AI tool will depend on the specific needs of the law firm or practice area, and practitioners must consider and carefully evaluate their strengths and weaknesses prior to implementation.

The Intersection of AI and Legal Malpractice

There is an inherent risk in the use of AI as part of the legal representation of a client. At the end of the day, AI is a product and not a person. Therefore, lawyers remain ultimately responsible for the handling of the case, whether or not AI plays a role. We can only expect the degree of AI usage in the legal profession to grow exponentially - and the risk along with it.

For example, in May of 2023, a young associate was tasked with writing a motion to set aside a court's prior denial of his client's motion for summary judgment. He decided to utilize ChatGPT to draft it, as it was his first time drafting that kind of motion. The AI system generated fake case citations. He filed the motion with the El Paso County District Court in Colorado. Of course, the presiding judge realized his use of fictitious cases, and the young attorney was disciplined with a two-year suspension for violating his duty of professional conduct to act with competence, honesty, and diligence.[1] His employment was also terminated following his actions.

Similarly, two lawyers in New York were sanctioned under Rule 11 for using ChatGPT and citing false cases. Rule 11 states "by presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: the claims, defenses, and other legal contentions are warranted **by existing law** or **by a nonfrivolous argument** for extending, modifying, or reversing existing law or for establishing new law." Sanctions are permitted when an attorney violates this Rule.

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[1] https://www.coloradopolitics.com/courts/disciplinary-judge-approves-lawyer-suspension-for-using-chatgpt-for-fake-cases/article_d14762ce-9099-11ee-a531-bf7b339f713d.html

United States District Judge Kevin Castel ordered the attorneys to send letters to the judges who were falsely named in their fake cases and imposed a penalty on them both in the amount of $5,000. Judge Castel noted that by not conducting an adequate and attentive inquiry before filing, the attorneys acted in bad faith.[2]

With regard to the use of AI tools, Judge Brantley Starr of the U.S. District Court for the Northern District of Texas stated: "These platforms are incredibly powerful and have many uses in the law: form divorces, discovery requests, suggested errors in documents, anticipated questions at oral argument. But legal briefing is not one of them. Here's why. These platforms in their current states are prone to hallucinations and bias. On hallucinations, they make stuff up--even quotes and citations. Another issue is reliability or bias. While attorneys swear an oath to set aside their personal prejudices, biases, and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath. As such, these systems hold no allegiance to any client, the rule of law, or the laws and Constitution of the United States (or, as addressed above, the truth). Unbound by any sense of duty, honor, or justice, such programs act according to computer code rather than conviction, based on programming rather than principle."[3]

As such, Judge Starr added a specific requirement for attorneys to file a "Mandatory Certification Regarding Generative Artificial Intelligence," which states "I certify that no portion of any filing in this case will be drafted by generative artificial intelligence or that any language drafted by generative artificial intelligence—including quotations, citations, paraphrased assertions, and legal analysis—will be checked for accuracy, using print reporters or traditional legal databases, by a human being before it is submitted to the Court. I understand that any attorney who signs any filing in this case will be held responsible for the contents thereof according to applicable rules of attorney discipline, regardless of whether generative artificial intelligence drafted any portion of that filing."[4] Judge Starr is one of many judges that have incorporated or support the incorporation of AI-specific rules.

The potential impact of AI on legal malpractice claims will not be fully understood until the claims start to flow and legal precedent is established to set acceptable parameters for the use of AI in the practice of law. That being said, there are certain obvious risks present when using AI in the practice of law including, but not limited to, the breach of client confidentiality in the use of AI; the possibility of sanctions against the lawyer and the client if AI is not used properly or with poor results; the risk of AI generated information being inaccurate or false resulting in a negative impact on the client representation; and, among others, the potential for copyright, data privacy, and defamation claims.

Lawyers, law firms, and legal malpractice insurers will need to keep a close eye on the emerging trends in the use of AI in the practice of law and develop standards and best practices to help minimize legal malpractice exposure.

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[2] https://www.sdnyblog.com/files/2023/06/Castel-Chat-GPT.pdf
[3] https://www.txnd.uscourts.gov/judge/judge-brantley-starr
[4] https://www.txnd.uscourts.gov/judge/judge-brantley-starr